

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.02.2020
Pronounced on	28.02.2020

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CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.586 of 2020

I.Nijanthan Selvakumar

...Petitioner

Vs.

- 1.The Additional Chief Secretary,
Rural Development & Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai-9.
- 2.The Director of Rural Development & Panchayat Raj,
Rural Development & Panchayat Raj Department,
Saidapet, Chennai-15.
- 3.The Personal Assistant to the District Collector,
(Panchayat Development),
Collector Office, Madurai.
- 4.The Block Development Officer (Panchayats),
Kalligudi Panchayat Union,
Kalligudi (Post),
Thirumangalam Taluk,
Madurai District.

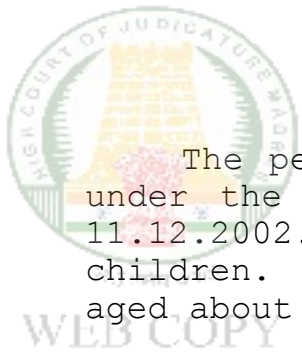
...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records from the fourth respondent pertaining to the impugned order passed Na.Ka.No.967/2019/The5 dated 28.06.2019 and to quash the same. Further to direct the respondents to appoint the petitioner on suitable post.

For Petitioner : Mr.K.Gokul

For Respondent : Mr.C.M.Marichelliah Prabhu
Nos.1 to 3 Additional Government Pleader

For Respondent-4 : Mr.M.Jeyakumar, AGP

**ORDER**

The petitioner's father C.Irwin, while serving as an Assistant under the fourth respondent Panchayat Union, died in harness, on 11.12.2002. He was survived by his widow, mother and two minor children. The petitioner herein, who was born on 24.03.1997, was aged about 5 years at the time of the death of his father.

2. It is claimed that the petitioner's mother had made a representation on 05.12.2005 seeking for compassionate appointment for her children in the future. After the petitioner became a major on 24.03.2015, he had made an application for compassionate appointment on 18.02.2016. In view of the inaction on the part of the respondents to consider his request, he had filed a Writ Petition in W.P.(MD)No.11138 of 2019 and this Court, by an order dated 30.04.2019, directed the respondents to consider his request for compassionate appointment, within a stipulated time. In this background, the impugned order dated 28.06.2019 came to be passed rejecting the petitioner's request, on the only ground that though G.O.Ms.No.102, Rural Development and Panchayat Raj Department, dated 13.07.2015, sanctions appointment to the legal heirs of Panchayat Secretaries on compassionate grounds, the order will not be applicable to the petitioner, since his father had died prior to the passing of the Government Order. The rejection order is under challenge in the present Writ Petition.

3. Heard Mr.K.Gokul, learned counsel for the petitioner and Mr.C.M.Marichelliah Prabhu, learned Additional Government Pleader for the respondents 1 to 3 as well as Mr.M.Jeyakumar, learned Additional Government Pleader appearing on behalf of the fourth respondent.

4. At the outset, it requires to be mentioned that fourth respondent herein had misconstrued the Government Order as to be prospective. The gist of the G.O.Ms.No.102, Rural Development and Panchayat Raj Department is sanctioning of the proposal of the Director of Rural Development and Panchayat Raj to extend the scheme of compassionate appointments to the legal heirs of the Panchayat Secretaries, who died while in service to the post of Night Watchman, Office Assistant and Record Clerk, on par with the benefits enjoyed by the legal heirs of the similar Government Servants, who died while in service. The Government Order does not indicate anywhere that the sanction would preclude the legal heirs of such Government Servants who had died prior to the issuance of the order. As a matter of fact, when the Government Order had accepted the proposal of the Director of Rural Development and Panchayat Raj to extend the same benefit enjoyed by the legal heirs of other Government Servants, it effectively extends the benefit thereunder retrospectively to cover the legal heirs of such Government Servants who may had died in service even prior to its issuance. Of course, any claim made by such legal heirs would be subject to their eligibility criteria prescribed under the scheme.



5. In the present case, the petitioner's mother had given a representation on 05.12.2005, which is within three years from the date of death of her husband, wherein she had sought for compassionate appointment in favour of her children in future. Likewise, the petitioner who became a major on 24.03.2015 had given an application seeking for compassionate appointment on 18.02.2016, which is within a period of three years from the date when he became a major. This Court in **W.P.No.26343 of 2012** dated **23.11.2016** in the case of **M.Sathish Kumar vs. the Director of School Education and others**, had placed reliance on two orders of the Hon'ble Division Benches of this Court and ultimately held that, when an application is made within three years from the date of attaining majority, the claimant would be entitled for appointment on compassionate grounds. The relevant portion of the order reads as follows:

'4. In this context, a Division Bench of this Court in a judgment reported in The Chief Engineer/Personnel, T.N.E.B., & another Vs. S.Suder reported in MANU/TN/0635/2009 was held as follows:

"4. In the judgment reported in 2001 Writ L.R.601 in the case of "Ramados.D. Vs. The Chief Engineer, T.N.E.B.", this Court (D.Murugesan,J) directed the consideration of the application made within a period of three years after attaining the majority by placing reliance on the very same Circular in B.P.No.46, dated 13.10.1995.

5. Subsequently, in the judgment reported in 2002(4) L.L.N.1132, (D.Murugesan,J.), in the case of "P.Ravi V.Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on compassionate grounds was directed to be considered.

6. Justice P.D.Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P.No.19673 of 2003, in the order dated 23.09.2003, in the case of "J.Jayakaran Vs. The Superintending Engineer, Theni Electricity Distribution Circle, Theni" and the application for appointment on compassionate grounds was directed to be considered.



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7. Justice K. Govindarajan has also taken the same view in Writ Petition No.13099 of 2003, order dated 30.10.2003, in the case of "G. Muthamilselvan V. The Chief Engineer (Personnel) and Anr." 8. Justice F.M. Ibrahim Kalifulla has also taken the same view in the decision reported in 2004(3) CTC 120, (2004) MLJ 238 in the case of "Meer Ismail Ali.T. V. The Tamil Nadu Electricity Board". We are told that the order in the said case of "Meer Ismail Ali" was confirmed in the Writ Appeal by the Division Bench in W.A.No.4008 of 2004, by judgment dated 1.12.2004 and as against the said judgment dated 1.12.2004, the Special Leave Petition in Civil Appeal No.6387 of 2005, was also dismissed by the Supreme Court, by judgment dated 4.4.2005."

5. In a very similar issue, a Division Bench of this Court in W.P.No.3050 of 2003 observed as follows:

"9. Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No.3050 of 2003 in the case of "Indiraniammal V. The Chief Engineer (Personnel) and Anr." and by judgment dated 08.03.2005, the Division Bench set aside the impugned order therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to consider the application.

10. There cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, by-passing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints of a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such



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appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the office of the Assistant Engineer, TNEB, Kazhuvanthilai, Kanyakumari District, died due to illness on 07.03.1998. At the time of the death of his father, the respondent was 15 years old and for the purpose of making application for appointment on compassionate grounds, he should have completed 18 years. Hence, he could not make any application for appointment on compassionate grounds. By placing reliance on B.P.No.46, dated 13.10.1995, he made application on 3.9.2002, within a period of four days from the date of his attaining majority, i.e., 18 years. That application was rejected on the ground that the same cannot be entertained as per the Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis of the Memo, dated 6.4.2002.

12. As we have already referred that the application for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board proceedings in B.P.No.46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate



grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority."

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6. If the above proposition is applied to the present facts of the petitioner, then the petitioner would be entitled for an appointment on compassionate ground, since the application has been made within a period of three years from the date of attaining majority. Since this application for compassionate appointment was rejected on the sole ground that the same was time barred and by applying the ratio in the decision of the Division Bench, the impugned order cannot be sustained and is liable to set aside. Accordingly, the impugned order dated 31.01.2012 passed by the third respondent is quashed.'

6. From the aforesaid decision, it is clear that the minor son of the deceased employee would be entitled to make an application for compassionate appointment within three years from the date when he becomes a major and therefore, there cannot be any dispute in this regard to make a claim. The only reason cited by the respondents that the benefit under G.O.Ms.102 is not applicable to the petitioner, is illegal and incorrect, for the reasons already stated in this order. As such, the petitioner would be entitled for compassionate appointment and consequently, the impugned order is liable to be set aside.

7. Accordingly, the impugned order dated 28.06.2019 passed by the fourth respondent is set aside. Consequently, there shall be a direction to the concerned respondent to issue an appointment order to the petitioner herein, on compassionate grounds, to such post that may be proportionate to the petitioner's qualification. The concerned respondent shall ensure that the appointment order is issued atleast within a period of eight weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)



To

- 1.The Additional Chief Secretary,
Rural Development & Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai-9.
- 2.The Director of Rural Development & Panchayat Raj,
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Kalligudi Panchayat Union,
Kalligudi (Post),
Thirumangalam Taluk,
Madurai District.

+1 CC to Mr.K.GOKUL, Advocate (SR-4657[F] dated 04/02/2020)
+1 CC to The SPL GP (SR-5134[F] dated 06/02/2020)

Order made in
W.P. (MD) No.586 of 2020
28.02.2020

CS (25.08.2020) 7P 7C